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OFFICE OF PETITIONS

In re Application of :
John H. Hayes :
Application No. 10/032,739 : **ON PETITION**
Filed: January 2, 2002 :
Attorney Docket No. 2244/50474 :

This is a decision on the "Petition to Restart Response Time Period to Notice to File Corrected Application Papers", filed October 7, 2003, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to timely file a response to the Notice to File Corrected Application Papers mailed January 31, 2002. This Notice set a shortened statutory period for reply of two months for submission of substitute drawings. No extensions of time under 37 CFR 1.136(a) were obtained. No substitute drawings having been received, the above-identified application became abandoned on April 1, 2002. The mailing of this decision precedes the mailing of a courtesy Notice of Abandonment.

Petitioner states that he did not receive the Notice to File Corrected Application Papers. To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been

entered had it been received and docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

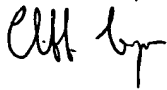
Here, petitioner has submitted a satisfactory docket record showing all his replies docketed for the date of March 31, 2002 (the reply date set by the Notice to File Corrected Application Papers). The docket record does not indicate a docketing entry for the instant application. In addition, petitioner has met the other requirements to establish non-receipt of the Notice to File Corrected Application Papers.

Accordingly, the holding of abandonment is **WITHDRAWN**.

Given the basis for granting this petition, the \$130 fee submitted will be refunded to petitioner under separate cover.

The application file is being forwarded to the Office of Initial Patent Examination for preexamination processing, using the drawings supplied on petition filed October 7, 2003.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

¹ See MPEP 711.03(c)(II).

² MPEP 711.03(c)(II) (emphasis added).

³ Id.